

REMARKS

This responds to the Office Action mailed on September 5, 2008.

Claims 1, 16, and 27 are currently amended, no claims are canceled, and no claims are added; as a result, claims 1-30 are now pending and subject to examination in this application.

§ 112 Rejection of the Claims

Claims 1-30 were rejected under 35 U.S.C. § 112, first paragraph, as lacking adequate description or enablement. The Applicant respectfully traverses this rejection.

The Office Action contends that there is no support for the claim language that a high speed motion detection algorithm is configured such that a first color pixel distribution is pre-selected “prior to receiving the frames of the area, as a function of the block of pixels that does not represent any motion of interest.” The Applicant respectfully disagrees.

Paragraph [0045] of the Applicant’s specification discloses:

The speed motion detection algorithm presents portions of images in grey scale pixels when such portions . . . are not expected to have motion. These areas may be selected on initialization based on knowledge of the operator, or may be selected based on a real time assessment of the scene.

The Applicant respectfully submits that the language “These areas (*i.e.*, the areas represented by the grey scale pixels that are not expected to have any motion) may be selected on initialization” provides support for the claim language “prior to receiving the frames of the area,” since one of skill in the art would know that initialization of a motion detection system occurs before any video frames are received and processed by the system. The Applicant further respectfully submits that the language “The speed motion detection algorithm presents portions of images in grey scale pixels when such portions . . . are not expected to have motion” provides support for the claims language “as a function of the block of pixels that does not represent any motion of interest.” The Applicant further respectfully submits that a claim limitation need not be recited *ipissimis verbis* in the written description in order for the written description to

provide adequate support for the claim limitation.¹ The Applicant respectfully requests the withdrawal of the rejection of claims 1-30 under 35 U.S.C. § 112, first paragraph.

Claim 27 was rejected under 35 U.S.C. § 112, second paragraph, as being indefinite.

The Applicant has amended claim 27 by deleting the phrase “contextual information.” The Applicant respectfully submits that this amendment overcomes the rejection of claim 27 under 35 U.S.C. § 112, second paragraph, and respectfully requests the withdrawal of the rejection of claim 27.

Claim Objections

Claim 27 was objected to under 37 C.F.R. § 1.75(d)(1), as failing to conform to the invention as set forth in the remainder of the specification.

Claim 27 was objected to because there is no support for “contextual information”.

The Applicant has amended claim 27 by deleting the phrase “contextual information.” The Applicant respectfully submits that this amendment overcomes the objection to claim 27 under 37 C.F.R. § 1.75(d)(1), and respectfully requests the withdrawal of the objection to claim 27.

§ 101 Rejection of the Claims

Claims 1-26 and 28-30 were rejected under 35 U.S.C. § 101 as being directed to non-statutory subject matter.

Claims 1 and 16 have been amended to recite one or more processors, thereby tying these claims and the claims dependent thereon to the statutory class of a machine. Support for this amendment can be found in the specification at page 14, ¶ [0047] and in FIG. 6. The Applicant respectfully submits that the amendments to claims 1 and 16 overcome the rejection of these claims 1-26 and 28-30 under 35 U.S.C. § 101, and respectfully requests the withdrawal of the rejection of these claims.

§ 103 Rejection of the Claims

Claims 1-26 and 28-30 were rejected under 35 U.S.C. § 103(a) as being obvious over Pavlidis et al., Urban Surveillance Systems 2001 in view of Monroe et al., US-2003/0025599 in

¹ See e.g., MPEP § 2173.05(i).

view of Flickner et al., US-2003/0122942 A1 and further in view of Gu et al., U.S. 5,874,988 in view of Parker et al. US-2003-0122942A1. The Applicant respectfully traverses this rejection.

The claimed subject matter recites “the first color pixel distribution is pre-selected, prior to the receiving the frames of the area, as a function of the block of pixels that does not represent any motion of interest.” The Office Action admits that this feature is not disclosed in either Pavlidis, Monroe, or Flickner. However, the Office Action contends that Gu teaches “the pixel distributions are preselected,” and that it would have been obvious to one of skill to incorporate the teachings of Gu with Pavlidis (as modified by Monroe and Flickner). The Office Action further admits that neither Pavlidis, nor Monroe, nor Flickner, nor Gu² discloses that the “color pixel distribution is pre-selected.” However, the Office Action contends that Parker discloses this feature, and that it would have been obvious to one of skill in the art to incorporate the teachings of Parker with Pavlidis (as modified by Monroe, Flickner, and Gu). The Applicant respectfully disagrees that it would have been obvious to one of skill in the art to incorporate the teachings of Gu with Pavlidis (as modified by Monroe and Flickner), and further disagrees that it would have been obvious to one of skill in the art to incorporate the teachings of Parker with Pavlidis (as modified by Monroe, Flickner, and Gu).

The Gu reference relates to color correction systems, not motion detecting systems. Indeed, a computer search of Gu for the term “motion” resulted in zero (0) hits. Moreover, the section of Gu cited by the Office Action relates to “Predetermined color parameter statistical data, e.g. the lower edge, upper edge, and peak values of color distribution histograms.” The Applicant respectfully submits that predetermining statistics regarding histograms is not a disclosure of a “pixel distribution [that] is preselected” in a motion detection system as is recited in the claims. So not only does Gu not disclose the feature as contended by the Office Action, but it would not have been obvious to incorporate Gu into Pavlidis because there is no reason to incorporate a predetermination of color parameter histogram data into a video surveillance system. Moreover, the rationale provided in the Office Action, that it would provide for efficient color processing of color images, has no application to Pavlidis, since Pavlidis is not a color correction system. Consequently, the Applicant respectfully submits that a *prima facie* case of

² The Applicant is somewhat confused by the contention in the Office Action that Gu teaches that “the pixel distributions are preselected,” followed by its admission that Gu fails to disclose that the “color pixel distribution is pre-selected.”

obviousness has not been established, and respectfully requests the withdrawal of the rejection of the claims.

The Office Action admits that Pavlidis (as modified by Monroe, Flickner, and Gu) is silent in regards to the color pixel distribution is pre-selected. The Office Action contends however that Parker discloses this feature, and that it would have been obvious to one of skill in the art to incorporate the teachings of Parker into Pavlidis in order to provide improved image processing. The Applicant respectfully disagrees.

The cited portion of Parker (¶ [0045]) relates to a skin detection algorithm, and in particular, the manner in which a pre-determined skin distribution color image segmentation can be used to determine if an image falls within that distribution---that is, if the image includes human skin. The Applicant respectfully submits that it would not have been obvious to combine Parker with Pavlidis since one of skill in the art would not have a reason to apply a skin color detection algorithm to a system for motion detection. Moreover, the rationale provided by the Office Action, that is that the combination of Parker with Pavlidis would provide improved image processing, is simply too general a rational to establish a *prima facie case* of obviousness.³

In summary, the Applicant respectfully submits that the Examiner is using the teachings of the Applicant's disclosure against the Applicant, that such use is improper, and that a *prima facie* case of obviousness cannot be established based on the Applicant's disclosure.

Applicant's Reply to Response to Arguments in the Office Action

The Examiner contends that the Applicant attacks the references individually, and that one cannot show non-obviousness by attacking references individually.

The Applicant has reviewed the cases cited by Office Action in support of this contention, and the Applicant respectfully disagrees with this dicta in these cases because it is not in line with either *Graham* or *KSR*. It is not in line with *Graham* because *Graham* requires an analysis of the scope and contents of the prior art. It is further not in line with *KSR*, since

³ See *In re Lee*, 277 F.3d 1338, 1342-44 (Fed. Cir. 2002) (There must be objective evidence and specific factual findings with respect to the motivation to combine references). See also *Ecolochem v. Southern California Edison Co.*, 277 F.3d 1361, 1372 (Fed. Cir. 2002) (broad conclusory statements regarding the teaching of multiple references, standing alone, are not evidence of obviousness).

KSR states that the obviousness inquiry should be flexible, and preventing an applicant from analyzing the prior art is not a flexible inquiry.

Moreover, in analyzing the references, the Applicant is merely replying to the interpretation of the references put forth by the Patent Office. The Applicant respectfully submits that it should be permitted to respond to the Patent Office's interpretations.

CONCLUSION

Applicant respectfully submits that the claims are in condition for allowance, and notification to that effect is earnestly requested. The Examiner is invited to telephone Applicant's representative at (612) 371-2140 to facilitate prosecution of this application.

If necessary, please charge any additional fees or deficiencies, or credit any overpayments to Deposit Account No. 19-0743.

Respectfully submitted,

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Date June 19 2009

By _____

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CERTIFICATE UNDER 37 CFR 1.8: The undersigned hereby certifies that this correspondence is being filed using the USPTO's electronic filing system EFS-Web, and is addressed to: Mail Stop Amendment, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450 on this 19 day of June, 2009.

Name _____

Signature 